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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,524	02/25/2004	Allan R. Jones JR.	I-25084	2784
4859	7590	06/21/2005	EXAMINER	
MACMILLAN SOBANSKI & TODD, LLC ONE MARITIME PLAZA FOURTH FLOOR 720 WATER STREET TOLEDO, OH 43604-1619			MITCHELL, TEENA KAY	
		ART UNIT	PAPER NUMBER	
		3743		

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/786,524	JONES ET AL.	
	Examiner Teena Mitchell	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 February 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 2-12 is/are rejected.
- 7) Claim(s) 13-16 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 April 2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of claims 3-5 and 8-16 is withdrawn after further review of reference(s) to Eaton et.al. (2004/0045551). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2-5 and 7-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Eaton et.al. (2004/0045551). (the provisional application date of Sep. 6, 2002 is being used by the examiner).

With respect to claim 2, Eaton discloses a nasal mask (10) including a body (14), said body having an upper portion and a lower portion (Figs. 1, 3), a bridge (36) extending from said upper portion of said body, said bridge having a free end (at 62), a brow bar (at 40), and means for releasably connecting said free end of said bridge to said brow bar (62, 65), and wherein while said free end of said bridge is connected to said brow bar, said brow bar is free to rotate relative to said bridge (Fig. 2).

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With respect to claim 3, Eaton discloses wherein said bridge (36) includes first and second spaced apart resilient arms (62) extending towards said free end of said bridge, said first arm has a first pin (64) mounted adjacent a free end of said first arm, said second arm has a second pin (64) mounted adjacent a free end of said second arm in axial alignment with said first pin, and wherein said means for releasably connecting said bridge (36) to said brow bar (at 40) comprises first and second pins and at least one opening (65) on said brow bar which receives said first and second pins (64) when said bridge (36) is connected to said brow bar, whereby said brow bar rotates on said first and second pins (Fig. 2).

With respect to claim 4, Eaton discloses wherein said at least one opening (65) on said brow bar comprises first and second axially aligned openings (65), said first opening receiving said first pin (64) and said second opening receiving said second pin when said bridge is connected to said brow bar (Fig. 3).

With respect to claim 5, Eaton discloses wherein said first and second openings (65) are spaced apart to receive said free end of said bridge (36) there between, and wherein said first and second pins (64) have ends angled for deflecting said first and second resilient arms (62) when said free end of said bridge is inserted into the space between said first and second openings (65).

With respect to claim 7, Eaton discloses a nasal mask (10) including a body (at 14), said body having an upper portion and a lower portion (Figs. 1, 3); a bridge (36) extending from said upper portion of said body (at 14), said bridge having a free end, a brow bar (at 40), and means (62, 65) for releasably connecting said free end of said

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bridge to said brow bar (at 40), and further including headgear means (32, 74) for mounting said brow bar on a forehead of a mask user, and wherein said free end of said bridge can be disconnected from said brow bar while said brow bar is mounted on a forehead of a mask user ([0012]).

With respect to claim 8, Eaton discloses means mounting said bridge on said body to move between a plurality of positions (54, 56) and further including a lock mechanism (60) for selectively locking said bridge to said body (14).

With respect to claim 9, Eaton discloses wherein said bridge (36) is connected to pivot (Fig. 2) on said mask body, and wherein said lock mechanism (60) locks the position of said bridge relative to said mask body.

With respect to claim 10, Eaton discloses a plurality of notches (56) on said mask body (14) and wherein said lock mechanism (60) selectively engages at least one of said notches to lock a position of said bridge (36) relative to said body.

With respect to claim 11, Eaton discloses wherein said plurality of notches (56) comprises pairs of notches ([0034]), and wherein said lock mechanism (60) engages a pair of said notches to lock a position of said bridge (36) relative to said body.

With respect to claim 12, Eaton discloses wherein said free end of said bridge is connected to said brow bar (at 40), said brow bar is free to rotate relative to said bridge (Fig. 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eaton (2004/005551) in view of Lang (6,712,072).

The difference between Kwok and claim 6 is elastic upper and lower straps. Eaton discloses the use of upper and lower straps for securing the cushion frame to the wearer's head (Col. 4, lines 45-63).

Lang in a nasal mask teaches elastic straps (6, 8) (Col. 2, lines 10-14). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the straps of Eaton to employ any well known elastic material including the elastic straps taught by Lang doing so provides a strap which is able to conform to different user's head sizes as elastic straps are able to stretch.

Response to Arguments

Applicant's arguments with respect to claims 2-16 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claims 13-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show nasal mask and forehead supports: 2005/0011521; 2005/0072428; 2004/0112387.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached on Monday-Friday however the examiner is on a flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Teena Mitchell

Teena Mitchell
Examiner
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June 17, 2005